

parents, good business friends and relatives in high walks of life."

Then, having so found, he went on to say: "I have weighed the evidence . . . very carefully and I found as a fact that the accused did ask P.W.1 for \$600 cash with intent to commit the offence of cheating. The accused may be a respectable man, he may not be wanting in good wealthy background with influential relatives and lots of business friends but it is clear to me that he wanted \$600 from P.W.1 that day . . . I found the story of P.W.1 has the ring of truth and I did not believe the accused's explanation."

With respect I do not understand this manner of reasoning. Requiring money and asking for it *per se* is not cheating unless there was a dishonest intention to cause wrongful loss. A man of means does not attempt to cheat another of a comparatively paltry sum; certainly, a client would not try to cheat his solicitor whom he hopes to consult and rely on for some time to come. Where was the dishonest intention if the appellant had, or would have, the means to meet the cheque, had he been given the opportunity to do so? On the premises of the facts accepted by him, the president should not have come to the conclusion he did.

I accordingly allow the appeal and quash the conviction. The cross-appeal by the Public Prosecutor has, of course, to be dismissed.

Appeal allowed.

TAN HUA LAM v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Suffian J.) November 8, 1965]

[K.L. — Federal Court Criminal Appeal No. X6 of 1965]

Internal Security Act, 1960, s. 57 — Consorting with members of Indonesian armed forces — Possession of sten gun — Possession of hand grenades — Statement of accused person — Failure to refer to statements of witnesses — Criminal Procedure Code (Cap. 6), s. 113 — Courts of Judicature Act, 1964, s. 60(1).

The evidence showed that the appellant was brought in the company of some armed Indonesian soldiers in an aircraft and that they landed by means of parachutes in Johore. The appellant was arrested the same morning and was found in possession of a sten gun and hand grenades. The evidence against the appellant consisted of the evidence of the Indonesian soldiers in the aircraft, the evidence of his capture and his statement. The appellant was convicted and appealed against his conviction.

Held: (1) the appellant was guilty even though the act of consorting took place in the airspace above the territory of Johore;

(2) on the evidence the appellant had been trained for sabotage work in Malaysia and could not successfully plead that he thought he was on a training exercise and did not know that he was being landed into Malaysia;

(3) although there was no direct evidence that the sten gun in the possession of the appellant was serviceable, the evidence of the prosecution witnesses who were

acquainted with firearms could be accepted, in the absence of evidence to the contrary, as showing that the appellant was in possession of a serviceable firearm;

(4) on the facts the statement of the appellant was properly admitted in evidence;

(5) although the learned trial judge was wrong in not examining the statements of the Indonesian soldiers, at the request of the defence counsel and deciding whether copies should be supplied to the defence, this error did not lead to a miscarriage of justice and therefore the case falls within the proviso to section 60(1) of the Courts of Judicature Act.

Cases referred to:—

(1) *Chan Chwen Kong v. Public Prosecutor* [1962] M.L.J. 307, 308.

(2) *Mighell v. Sultan of Johore* [1894] 1 Q.B. 149.

(3) *Cotterill v. Penn* [1936] 1 K.B. 53.

(4) *Horton v. Gwynne* [1921] 2 K.B. 661.

(5) *Chong Kim Seng v. Public Prosecutor* [1949] M.L.J. 109, 111.

(6) *Ismail bin Haji Ibrahim v. Public Prosecutor* [1949] M.L.J. 138, 140.

(7) *Lim Sing Hiauw v. Public Prosecutor* [1965] 1 M.L.J. 85.

FEDERAL COURT.

T. T. Rajah for the appellant.

Nik Saghir bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: During the night of 1st/2nd September, 1964, an Indonesian aircraft carrying 48 armed men under the command of Lieutenant Sutikno of the Indonesian Air Force left Medan in Indonesia and flew to Malaysia. Some of the men in the aircraft were members of the Indonesian armed forces, others were Malaysians who were not members of the Indonesian forces. The object of the expedition was sabotage to disrupt the economy of Malaysia.

Shortly after 2 a.m. on the morning of 2nd September the aircraft was over Malaysian territory in the neighbourhood of a land settlement area known as Kampong Tenang, near Labis in the State of Johore and some 40 miles east of the coast, which is within a proclaimed Security Area thus described in the Schedule to the Proclamation of 17th August, 1964 (Legal Notification No: 245 of 1964):—

"The area comprising the territories of the States of Johore, Malacca and Negri Sembilan."

When the aircraft was over Kampong Tenang the party of armed men left it by means of parachutes carrying their arms and ammunition with them and in due course they came to earth. Later the same morning the present appellant, who is a Malaysian, was arrested. He was thought to have been one of the armed men who had left the aircraft by parachute and he was prosecuted on three charges under the Internal Security Act, 1960.

These charges were as follows:—

"1st CHARGE

That you between 2.00 a.m. and 9.30 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong *vide* Federal L.N. 245 of 17th August, 1964, namely Kampong Tenang, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunition in contravention of the provisions of section 57(1) of the Internal Security Act, 18/60 in circumstances which raised a reasonable presumption that you intended to act with such members of the said Indonesian Armed Forces in a manner prejudicial to Public Security and that you have thereby committed an offence punishable under section 58(1) of the same Act.

2nd CHARGE

That you at 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong, by Federal L.N. 245 of 17th August, 1964, namely at Kampong Tenang, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession a firearm to wit a sten gun without lawful authority and that you have thereby committed an offence punishable under section 57(1) (a) of the Internal Security Act, 18/60.

3rd CHARGE

That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 dated 17th August, 1964, namely Kampong Tenang, Labis, in the District of Segamat, in the State of Johore without lawful excuse had in your possession ammunition to wit 200 rounds of ammunition and 2 hand-grenades without lawful authority and that you have thereby committed an offence punishable under section 57(1) (b) of the Internal Security Act, 18/60."

In the event the appellant was convicted on all three charges and was sentenced to death. Against these convictions he has now appealed.

It will be convenient to consider in the first place the evidence for the prosecution and it is to be noted that none of that evidence which related to the events prior to his arrest was contradicted by the appellant. In the course of the trial he gave evidence as to certain events after his arrest in connection with the admissibility of a statement he is alleged to have made to the police but when after the close of the prosecution case he was called on to make his defence he remained silent.

The prosecution evidence may be divided into three parts.

First there was the evidence of Lieutenant Sutikno and of two of the Indonesian soldiers in the aircraft, all of whom had been captured after landing and were subsequently treated as prisoners of war and accorded the protection of the Geneva Convention.

Lieutenant Sutikno said that on 1st September, 1964, in Jakarta he was instructed to proceed to Malaysia to carry out sabotage in pursuance of his country's "Crush Malaysia" policy. He had under his command 34 Indonesians and 14 Malaysians, including the appellant, two of whom were women. The party proceeded to Medan and then in the direction of Malaysia.

- A At that time he had not told his men that they were going to Malaysia but on a training exercise. After leaving Medan the men donned their parachutes. They were then all carrying provisions, firearms, hand-grenades and at least 200 rounds of ammunition, and had been allotted numbers showing the order in which they were to leave the aircraft: the "jump number" of the appellant was 46 and he was the last of the Malaysians in the jumping order. About 2 a.m. they received the signal to jump and the witness was the first to leave the aircraft. He landed near Kampong Tenang and was later captured but did not see the appellant again till some time later when he saw him in prison.
- B
- C

Similar evidence was given by two captured Indonesian soldiers, Sutisna and Karma.

- Sutisna said he was a member of the party commanded by Lieutenant Sutikno and the appellant was also a member of the party. They all had provisions, firearms and ammunition. In the aircraft they were given money which he later discovered to be Malaysian currency. The appellant's "jump number" was 46; his own was 48 and he was the last to leave the aircraft. When he left Medan he did not know the destination of the aircraft and was told they were going for training.
- D
- E

Karma's evidence was to the same effect except that he specified the firearm which the appellant was carrying as a sten gun. His "jump number" was 43 and that of the appellant was 46 and he jumped before the appellant. He was captured at Kampong Tenang the day after the jump and later the same day he saw the appellant in Labis police station.

- F That was the evidence of the Indonesians. The trial judge treated it as the evidence of accomplices and gave himself the usual warning as to the desirability of corroboration.

- G In the second place there was a body of uncontradicted evidence, none of it tainted in any way, regarding the events leading up to the arrest of the appellant.

- H About 9 a.m. on 2nd September two timber workers, Tan Koon and Ong Char Ching, left Pekan Ayer Panas, near Kampong Tenang, on a motor cycle to go to their place of work. After they had left the main road and entered on to an earth road leading into the jungle they met the appellant and another Chinese, neither of whom they knew, coming out of the jungle dressed in underwear. They asked those men where they had been working and they said they had been to inspect a rubber estate. This aroused the suspicions of the two timber workers and they returned to Ayer Panas and informed the police. Constable Ramli proceeded to Ayer Panas where he found the appellant who was wearing underpants and a singlet and another
- I

Chinese wearing underpants only. He asked them for their identification cards. The appellant produced a card bearing the name of Tan Hua Lam and he arrested him. The other man ran away and, although the bystanders tried to prevent him, he made good his escape. The constable then took the appellant to Kampong Tenang police station where he handed him to constable Ya'acob. This officer found in his possession a purse containing \$274 in single dollar Malaysian notes. He said that at this time the appellant was pale and appeared to be frightened and had scratches on his hands and legs.

Finally, there was an alleged voluntary statement made by the appellant to a police officer on 4th September which was tendered and admitted in evidence under section 75 of the Internal Security Act. The appellant claimed that in spite of threats and physical violence on the part of the police he did not make that statement and the circumstances relating to it will have to be examined later. On the face of it, however, it amounted to a complete confession of the offences charged. Its effect was as follows.

His home was in Pontian. In 1961, when he was 19 years old, he had to leave school because of poverty and he did various odd jobs. He had a grudge against the Malaysian government because he felt that with a better education he would be earning more money. In 1964 he and a friend went to Indonesia to see the country and to get military training. In Indonesia with others from this country he received training in the use of firearms and in parachute jumping. On 31st August, 1964, he was taken with others to Jakarta where he was given a sten gun with 200 rounds of ammunition, two hand-grenades, some provisions and a parachute and told he and the others were going for training. Shortly afterwards he and the other Malaysians, with about 24 Indonesians left in an aircraft. It landed about 7 p.m. Some time later it took off again and after that each of the people in it was given a bundle of between \$300 and \$400 in Malaysian single dollar notes. When he saw that the money was Malaysian he realised that they were on their way to Malaysia. About 1 a.m. they started jumping and he was the 38th to jump. When he jumped his arms and ammunition were tied to his haversack but he lost them. He landed about six minutes after jumping and left his parachute hanging on a small tree. He could not make contact with the others though he blew his whistle and wandered about till dawn. He then discarded his uniform and followed a path dressed only in his underclothing but carrying his money. He was later arrested at a coffee shop at Ayer Panas.

Now, if the prosecution evidence was believed it clearly made out that about 2 a.m. on

A 2nd September, 1964, in the airspace of the territory of Johore somewhere above Kampong Tenang the appellant was consorting with and acting as a member of a body of armed men, many of them members of the Indonesian armed forces and led by an Indonesian officer, whose object was to land by parachute in Malaysia in order by sabotage to disrupt the economy of the country, that at some time before jumping he became aware of the destination of the expedition and that he must by reason of its composition and equipment and of his previous training have known of the object of the expedition. Again, at the same time and place, he was in possession of a sten gun and 200 rounds of ammunition for which he could show no lawful authority, or at any rate no authority lawful in the eyes of our law. He said not a word to contradict that evidence or by way of explanation of it. In the circumstances if the prosecution evidence was believed it is difficult to see how the trial court could have refrained from convicting him on all the three charges against him. As was said in the case of *Chan Chwen Kong v. Public Prosecutor*:—⁽¹⁾

"Once the prosecution produces evidence which if believed would support a conviction there is a tactical onus on the accused person either to produce evidence of his own or to point to something in the prosecution evidence that at the very lowest make the trier of fact less than sure of any conclusions he might otherwise be prepared to base upon the prosecution evidence. If he fails to discharge that tactical onus he will be convicted."

The convictions have, however, been attacked in this court with very great pertinacity on a number of grounds, not all of them of equal force.

In the first place it was argued that whatever the appellant did was done in the air and that the airspace over the territory of Johore did not form part of the security area prescribed by the Proclamation of 17th August, 1964. No authority was advanced in support of this proposition and indeed it would seem to be so fundamentally wrong that no show of authority is called for to rebut it. The definition of the security area in the proclamation includes the territory of the "State" of Johore, Johore was formerly a sovereign State (see *Mighell v. Sultan of Johore* ⁽²⁾); and it is now one of the States forming Malaysia; and "*cuius est solum, cuius est usque ad coelum*".

Then there was an argument that seemed to be to the effect that when the appellant embarked on the expedition of 1st September he was under the impression that it was a training exercise, that he could not have known till after the aircraft left Medan and the money was distributed that a landing in Malaysia was contemplated and that at that stage he could do nothing to avoid being brought into the airspace forming part of a security area. Accordingly he could not be guilty of any offence.

Even if that argument possesses any plausibility when considered in an almost intellectually impossible isolation it completely disregards the evidence in the case as a whole and the surrounding circumstances of which we all have knowledge and of which we must take judicial notice. The appellant had voluntarily left his own country, against which he admitted a grudge, to go to Indonesia for military training; it was the openly avowed policy of the Republic of Indonesia to crush Malaysia, a policy which was being ruthlessly carried into effect by invasions of Malaysian soil by sea and air; and on both sides of the Straits of Malacca "Konfrontasi" was a household word. The actual expedition in which the appellant was voluntarily engaged was a military one and its members were fully armed; the leader was an Indonesian officer; the members were either Indonesian soldiers or Malaysians who had gone to Indonesia. If it was a training exercise with what end was the training being undertaken if not to attack Malaysia? And was not that an activity in which the appellant was consorting with the other occupants of the aircraft which was prejudicial to the public security of this country? If they were not about to do something actively prejudicial that night they were training themselves to do it some other night. And how could it be said that even if the appellant did not intend to use his arms and ammunition that very night but some other night that in itself made his possession lawful? If in the course of thus consorting and while carrying arms and ammunition he came physically within a security area then clearly he should take the consequences, for there is nothing to show that he did not voluntarily put himself in the position where he might be brought within a security area. *Mutatis mutandis* he was in the position of the respondent in the case of *Cotterill v. Penn*⁽³⁾. He shot a bird which he honestly believed to be a wild pigeon but which turned out in fact to be a domestic pigeon. A divisional court consisting of Lord Hewart C.J., Avory J. and Humphreys J. held that he should have been convicted of the offence of killing a domestic pigeon in contravention of section 23 of the Larceny Act, 1861. Lord Hewart C.J. said (at p. 61):—

"In my opinion, although the section says 'unlawfully and wilfully,' it does not require the element of *mens rea* beyond the point that the facts must show an intention on the part of the person accused to do the act forbidden, which was here that of shooting. It seems to me to be immaterial that the bird which the respondent shot was of a different kind from that which he thought that he was shooting."

Avory J. quoted with approval the observation of Darling J. in the case of *Horton v. Gwynne*:—⁽⁴⁾

"A person who shoots a pigeon which turns out to be a house pigeon must take the consequences of his act."

Then it was said that the prosecution had failed to prove that the sten gun of which the

A appellant was said to have been in possession was serviceable. That argument was based on the case of *Chong Kim Seng v. Public Prosecutor*,⁽⁵⁾ which was a case under the 1948 Emergency Regulations which as regards possession of firearms were *in pari materia* with the Internal Security Act. In that case it was said that the definition of "firearm" in the regulations placed on the prosecution the onus of proving that the firearm in question was serviceable. Counsel, however, agreed that he had overlooked the later case of *Ismail bin Haji Ibrahim v. Public Prosecutor*⁽⁶⁾ where Willan C.J. said this:—

C "If, for instance, the prosecution evidence is that witnesses sufficiently acquainted with firearms say that the accused was carrying a revolver, and they describe it to be a revolver of a particular type or manufacture, and that evidence is believed, it would be proper to convict that accused on that evidence in a case in which the revolver was not recovered. Even if there was doubt on the question of that revolver being capable of discharging a bullet at the time when the accused was seen by the prosecution witnesses to be carrying it, again it would be proper for the assessors and the trial judge, giving due regard to any evidence to the contrary, to come to the conclusion that the revolver could be adapted to discharge a bullet, and thus bring it within the definition of 'firearm' as defined in the Emergency Regulations, 1948."

E We now come to a ground of appeal relating to the evidence of the three Indonesian prisoners of war who gave evidence. Each of these had made statements to the police in connection with the case against the appellant, copies of which had been supplied to the defence prior to the trial. At the trial, however, two of them were cross-examined as to other statements they had made to the police, the object clearly being to obtain material which might be capable of use to discredit their evidence in so far as they identified the appellant.

G Sutisna admitted in cross-examination that about a month after his arrest he made a statement to the police in connection with a charge then pending against himself which had since been withdrawn. And in that statement he had mentioned the three Malaysians (who included the appellant) whom he had mentioned in the statement of which a copy had been supplied to H counsel (Exhibit D.8).

I Karma said also in cross-examination that after his capture "my statement was taken for five days" and that in the course of making that statement he identified the appellant but did not name him. Later at Labis he made a short statement in which he again identified the appellant, and in fact the defence had been supplied with a statement made by this witness at Labis on 9th November, 1964, in which he identified the appellant (Exhibit D.7).

Lieutenant Sutikno, somewhat curiously, was not cross-examined on the point.

On that material defence counsel asked the judge to act under section 113 of the Criminal Procedure Code and to refer to the statements with copies of which counsel had not been supplied with a view to ascertaining whether he should be supplied with copies under the terms of the section. The application was refused on the ground that the statement in question had not been made in the course of the police investigation into the charges against the appellant. In this we think the judge was wrong. If he had looked at the statements in question and then decided that the defence should not be supplied with copies that would have been the end of the matter. Nevertheless the two witnesses were on the prosecution showing, and indeed on their own showing, participants with the appellant in the Kampong Tenang parachute drop, they both said that in their statements they had identified the appellant. These statements must have been made after the appellant had been arrested and so while the police were investigating his part in the parachute drop. In the circumstances if they referred to the appellant, as they clearly did, they should have been treated as having been made in the course of the police investigation of the charges against him and we think that the judge should have examined them. It may be unlikely that such an examination would have discovered anything that would have assisted the defence. Nevertheless the examination should have been made.

On that point, then, the appeal is successful but in our view the case clearly falls within the proviso to section 60(1) of the Judicature Act for we can see no possibility of the error having led to any extent whatsoever to any miscarriage of justice.

The only other ground of appeal with which it is necessary to deal, and it is the ground which has caused us the greatest concern, relates to the statement which the appellant is alleged to have made to the police on 4th September.

The case for the prosecution was that he did make that statement, that he made it voluntarily after the prescribed caution was administered to him and that it was admissible under section 75 of the Internal Security Act. The appellant's case was that although he was subjected to threats and physical violence he did not make any statement. If that be accepted, it follows, of course, not that the statement which was admitted was induced by improper means and was therefore inadmissible in evidence but that it was never made by the appellant and was a fabrication by the police.

As has been said the appellant was arrested on the morning of 2nd September and the statement, whether made by him or fabricated by the police as the case may be, was written down by A.S.P. Yeoh Ah Cheng on the morning of 4th

September at the Segamat police station. He said that, though he himself had some knowledge of the Hokkien dialect, he interviewed the appellant through Corporal James Wong as interpreter. At the time the appellant was handcuffed and one or two armed police were outside the room. The witness asked the appellant what language he wished to speak and the appellant replied in Hokkien. He then administered the form of caution contained in section 75(1) of the Internal Security Act which he had written down and this was interpreted to the appellant. The appellant then made a statement which was interpreted into English by the interpreter and written down by the witness. It was read back to the appellant through the interpreter and he was asked if it was correct and whether he wanted to make any alterations or additions. The appellant replied that it was correct and he had nothing further to say. The witness was satisfied that the statement was freely and voluntarily given. He denied that before the appellant was cautioned the interpreter asked him why he had gone to the mortuary the previous evening and that the interpreter then said to him: "Speak properly otherwise you will be in the same position as the dead body". He himself asked the appellant whether he had identified a woman who had been killed the previous day but that was after the appellant had been cautioned, because he wished to ascertain the dead woman's identity. At the time of taking the statement neither he nor the interpreter was armed.

This witness's evidence was supported by the evidence of the interpreter. In cross-examination he denied that before the appellant was cautioned there was some reference to a dead woman in the Segamat mortuary and that he then told the appellant that if he did not speak properly he would find himself in the same position as the dead woman. He also denied that no caution whatsoever was given to the appellant. In the course of considerable questioning on this point (this was on 4th September, 1965, exactly a year after the event) he was invited to repeat the caution from memory. This he did but incorrectly. As, however, his evidence was that the caution was read by A.S.P. Yeoh and that he interpreted what was read little, if any, weight is to be attached to this.

As regards the incident at the Segamat mortuary, Inspector Warren of the special branch said that on 3rd September as a result of the invasion he had at the Segamat mortuary the unidentified bodies of two Indonesians and a Chinese woman. He wished to have these bodies identified for intelligence purposes and he took the appellant and other prisoners to the mortuary for that purpose. His recollection was that the appellant identified the Chinese woman. He denied making any threat of any sort to the appellant. He merely asked him if he could

identify any of the bodies and the appellant identified the woman.

The appellant himself gave evidence. He said that after his arrest on 2nd September he was taken to Ayer Panas police station and from there to Labis police station with his hands tied behind his back. Then he was taken to Segamat police station. Nothing happened to him there but he was taken to a place, of which he did not know the name, by lorry, a journey of about half an hour. He was taken to a house where he saw three Chinese men one of whom asked if he had jumped from an aeroplane. He said: "No". Then the three men assaulted him with their fists for about 5 minutes and questioned him. He was then taken back to Labis where two men in civilian clothes questioned him and assaulted him with their fists and with a chair, both of them being the same persons who had assaulted him near Segamat. Then he was taken to Johore Bahru where he arrived about 9 p.m. Nothing happened to him there and the following day, 3rd September, about 7 p.m. he was taken to the mortuary at Segamat with another prisoner. He was there shown four dead bodies and was asked to identify them and was threatened with assault if he failed to do so. The following morning, that is 4th September, he was taken before A.S.P. Yeoh Ah Cheng and his interpreter Corporal James Wong. He was asked what he was doing at the Segamat mortuary the previous night. He replied that he had been to see some dead bodies but did not know them. He was then told that: "In a short while I am going to take a statement from you. You had better speak properly, otherwise your life could be just like those dead bodies." After that he did not give any statement although he did give particulars as to his age and so forth and remained in the room for about an hour while A.S.P. Yeoh was writing. He was afraid while he was with A.S.P. Yeoh because there were armed policemen near the door and because the interpreter had a pistol at his waist. Moreover he had been told that if he did not speak properly he would join the dead bodies.

Except for identifying the dead body at the mortuary and giving his particulars to A.S.P. Yeoh he did not say that he had made any statement to anybody.

As regards the assaults which he alleged had been made on him at Segamat and Labis he said he did not make any complaint to the magistrate before whom he appeared from time to time, but he did complain to his lawyer and to the prison doctor.

The defence did not call the prison doctor but they did call a number of police officers to give evidence as to the movements of the appellant prior to 4th September.

Akil bin Adam, O.C.P.D. at Segamat, said that about 12.30 p.m. on 2nd September the appellant was at Segamat police station. About 1.15 p.m. he and others were taken to Kampong Tenang police station and he was brought back to Segamat police station on 4th September about 12.10 p.m. There was no record as to the appellant being at Segamat on 3rd September. Constable Tham Ah Choy said that about 1.35 a.m. on 3rd September the appellant and others arrived at the special branch, Johore Bahru, and as far as he knew were there until at least 10 a.m. that morning. Sergeant Menon said that he found the appellant at the special branch, Johore Bahru, on 3rd September about 10 a.m. and he was sent to Labis about 7 p.m. the same day. Constable Ishak said that about 11 p.m. on 4th September the appellant was brought from Segamat to Johore Bahru.

All the evidence as to the making of the statement was considered by the trial judge. He said he was satisfied beyond reasonable doubt that the appellant was not assaulted by anybody with a view to extracting a confession from him and that no promise, inducement or threat was made to the appellant in relation to the statement. He was satisfied that the caution as required by law was administered to the appellant, that the appellant understood the caution and that he made a statement of his own free will. With regard to the appellant being handcuffed he thought this was reasonable, there had been a recent parachute landing in the neighbourhood and the police had every justification for taking all necessary precautions to prevent the escape of captured persons.

Now the questions which the judge had to decide were (1) whether the appellant did make the statement he was said to have made; (2) whether if he did make it the making of it was caused by "any inducement, threat or promise having reference to the charge(s) against him" (see Internal Security Act, section 75); and (3) whether the statutory form of caution was administered to him. The second and third questions did not arise unless the answer to the first question was in the affirmative, for if he did not make the statement it was not evidence. If the answer to the second question was in the negative and the answer to the third question was in the affirmative then the statement was properly admitted. And all three questions were questions of fact in relation to which in the circumstances the most important consideration was the view the judge took of the credibility of the witnesses.

With regard to the first and third questions the judge having heard the evidence of the appellant and of the prosecution witnesses clearly accepted the evidence of the latter as truthful

and rejected the appellant's evidence as untruthful. With that not having seen or heard the witnesses ourselves we cannot quarrel.

With regard to the second question, apart from any threat that might be implied in being shown the dead bodies on 3rd September, a point to which we shall come shortly, the only threats alleged by the appellant were of the words said to him in connection with the bodies at the time they were shown to him and when he was interviewed by A.S.P. Yeoh. That evidence was contradicted by the prosecution witnesses and their evidence was accepted by the judge.

As regards his allegations of being assaulted, though his evidence on this was not contradicted in terms it is difficult to see how the judge could be expected to accept it when the appellant had been contradicted on so many other points by witnesses whom the judge accepted as truthful. And there was the further consideration that although he called a number of police witnesses, as to his movements, and indeed was granted an adjournment to enable him to call them, the appellant made no attempt to call the doctor to whom he said he had made complaints at the time and who might well have been regarded, from his point of view, as a more impartial witness than any police officer. Finally he did not claim that on 4th September he was in any way influenced by the alleged assaults to do something which he strongly denied having done.

As regards any suggestion that his being asked to identify the dead bodies might have operated as some sort of implied threat the possibility of this seems to be so remote as to call for being disregarded. All he was asked was whether he could identify them and according to the prosecution evidence, which was believed, there was nothing more. If any impression was made on his mind the wording of the caution which was found in fact to have been administered to him before he made his statement was reasonably adequate to remove the effect of it and there was the evidence of Corporal Wong, the interpreter, that at the time of making the statement he did not appear to be frightened.

Nor can we see any substance in the suggestion that, because when making his statement the appellant was handcuffed and there were armed police outside the room, the appellant had any reason to believe that his freedom to refrain from making a statement was any less than was conveyed to him by the words of the caution. He knew he was a prisoner, it is only reasonable to accept that in the prevailing conditions, which were akin to conditions of war, practically every man in uniform whom he had seen since his arrest was armed. As regards his being handcuffed, that was a reasonable precaution the

A force of which he himself must have recognised and in any event again there was nothing in it to detract from the force of the caution.

In all the circumstances we can see no grounds for holding that the statement was not properly admitted in evidence.

B We would add that the case had little if anything in common with the case of *Lim Sing Hiaw v. Public Prosecutor* (7) which was cited to us though not at the trial. That was a case where the prisoner had alleged that prior to his having made a statement to the police which was tendered by the prosecution (which he admitted making) another statement had been elicited from him by threats by special branch officers. His evidence was completely contradicted at the trial and we held that when he was subsequently interviewed by the police something more than the usual caution should have been administered to dissipate any possible effect remaining on his mind that the improper means which had elicited his earlier statement were reasons for thinking that he was not free to refrain from making the second one. There was nothing of the sort here. On most points here the appellant's evidence was contradicted and the judge weighed up the contradicting bodies of evidence before admitting the statement to the police. Moreover in the present case the appellant had made no previous statement except to identify a body and regarding that statement there was evidence which the judge accepted to the effect that no improper means were used to obtain it and in any event he denied having made the statement to the police which was tendered by the prosecution.

And quite apart from the statement there was ample evidence not merely to support a conviction but to make a conviction virtually inevitable.

G The appeal is dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. LIM GEOK LOW

H [R.Cr.J. (Ong Hock Thye Ag.C.J.) November 18, 1965]

[K.L. — Criminal Revision No. 26 of 1965]

Sentence — Excessive sentence imposed — Penal Code, s. 71.

I The defendant had been convicted of the offences of using an unlicensed public service vehicle, contrary to section 92(1) of the Road Traffic Ordinance, 1958; of using a vehicle for a purpose for which a licence fee chargeable is higher than that charged for the licence actually held, contrary to section 22(2) of the Ordinance; and of using a vehicle in such a manner that the insurance against third party risks ceases to be in force, contrary to section 74(1) of the Ordinance. The president of the session court imposed a fine of \$2,000 or 4 months imprisonment on the first charge, \$800 or 2 months' imprisonment on the second charge